



July 15, 2002

Mr. W.C. Kirkendall
District Attorney
25th Judicial District
113 South River, Suite 205
Seguin, Texas 78155

OR2002-3846

Dear Mr. Kirkendall:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165667.

The 25th Judicial District Attorney (the “district attorney”) received a request for information regarding the investigation into allegations made against Guadalupe County Treasurer Larry Jones. You claim that the requested information is excepted from disclosure under sections 552.101, 552.103, 552.107, 552.108, and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information. We have also considered comments submitted by Assistant Attorney General Angela S. Goodwin. *See* Gov’t Code § 552.304.

Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. Based on the information you provided, we understand you to assert that the requested information pertains to a case that concluded in a result other than conviction or deferred adjudication. Therefore, we agree that section 552.108(a)(2) is applicable. Thus, you may withhold the requested information from disclosure based on section 552.108(a)(2). We note that you have the discretion to release all or part of the requested information that is not otherwise confidential by law. Gov’t Code § 552.007.

¹As you did not submit to this office written comments stating the reasons why sections 552.103, 552.107, and 552.111 would allow the information to be withheld, we find that you have waived these exceptions. *See* Gov’t Code §§ 552.301, .302. Further, as you did not submit to this office written comments stating the reasons why section 552.101 would allow the information to be withheld, we assume that you are no longer asserting this exception to disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Karen A. Eckerle". The signature is fluid and cursive, with the first name "Karen" being more prominent than the last name "Eckerle".

Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 165667

Enc: Submitted documents

c: Mr. Darren Dunn, KWED Radio
c/o W.C. Kirkendall
District Attorney
25th Judicial District
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(w/o enclosures)

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